

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANNA ZBITNOFF,

Plaintiff,

v.

NATIONSTAR MORTGAGE, LLC,

Defendant.

No. C 13-05221 WHA

**ORDER GRANTING
MOTION TO DISMISS**

Pro se plaintiff Anna Zbitnoff executed a promissory note in 2005, secured by a deed of trust, to obtain a home loan from Lehman Brothers Bank, FSB (RJN Exh. 1). Defendant Nationstar Mortgage, LLC, was substituted as the beneficiary under the deed of trust on April 17, 2013, and Sage Point Lender Services, LLC, was substituted in as trustee on June 17, 2013 (RJN Exhs. 2–3). Defendant Nationstar recorded a notice of default on June 12, 2013, and later recorded a notice of trustee’s sale on September 18, 2013 (RJN Exh. 4–5). In its motion to dismiss, defendant states that a trustee sale was scheduled to be held on December 2, 2013 (Br. at 2). Neither party has informed the court whether the trustee sale occurred on that date.

On September 8, 2013, plaintiff sued defendant in state court. While the form complaint is somewhat unclear, plaintiff’s claims for relief include breach of contract, fraud, and violations during the securitization process (Compl. at 2). Following removal, defendant moved to dismiss the action for failure to state a claim. To the extent stated below, defendant’s motion to dismiss is **GRANTED**. The hearing on December 26, 2013, is hereby **VACATED**.

To survive a motion to dismiss, a pleading must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). For fraud claims, Rule 9(b) requires that factual allegations be specific enough to give a defendant notice of the particular misconduct which is alleged to constitute the fraud. *Swartz v. KPMG, LLP*, 476 F.3d 756, 764 (9th Cir. 2007). Form complaints that do not contain either a statement of facts or substantive legal analysis are insufficient to state a claim for relief. *Gumbao v. Wells Fargo Bank, et al.*, No. 13-3952 (N.D. Cal. Oct. 17, 2013).

The only claim that plaintiff analyzes is her “bifurcation” claim, in which she alleges that the “note and deed of trust have been bifurcated” and she therefore “rescinds” her note and deed of trust (Compl. at 2, 10–14). In *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1043–44 (9th Cir. 2011), however, our court of appeals rejected a similar claim because “the split only renders the mortgage unenforceable if [the beneficiary] or the trustee, as nominal holders of the deeds, are not agents of the lenders.” Here, plaintiff has not alleged that defendant is not an agent of the lender. Thus, in so far as plaintiff is alleging that defendant has no legal authority to foreclose on the subject property, the claim is **DISMISSED**. Given that plaintiff does not analyze any other claim in her form complaint, her breach of contract and fraud claims are also **DISMISSED**.

Good cause showing, defendant’s request for judicial notice of the 2005 deed of trust, 2013 assignment of the deed of trust, 2013 notice of the substitution of trustee, 2013 notice of default, and 2013 notice of trustee sale is **GRANTED**. FRE 201.

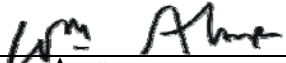
Plaintiff may seek leave to amend her complaint and will have until **JANUARY 23, 2014, AT NOON**, to file a motion, noticed on the normal 35-day calender, for leave to file an amended complaint. A proposed amended complaint should be appended to this motion. Plaintiff should plead her best case. The motion should clearly explain how the amended complaint cures the deficiencies identified herein, and should include as an exhibit a redlined or highlighted version identifying all changes.

This order urges plaintiff to contact the federal pro bono project by signing up for an appointment with the help desk in the appointment book located outside Room 2796 on the 15th

1 Floor of the San Francisco Courthouse or calling the appointment line: (415) 782-9000 x8657.
2 The project provides limited free legal advice and assistance, but not legal representation, to pro
3 se litigants.

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5 **IT IS SO ORDERED.**

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7 Dated: December 19, 2013.

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10 WILLIAM ALSUP
11 UNITED STATES DISTRICT JUDGE
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